



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 33790981

Date: SEP. 27, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a vocational agricultural teacher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he met the initial evidentiary requirements through either a receipt of a one-time achievement or satisfaction of at least three of the ten categories of evidence. We dismissed the appeal and three subsequent motion filings. The matter is now before us on a combined motion to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The Petitioner acknowledges that his motion filing is late. He provides evidence showing that he attempted to file the motions (Notice of Appeal or Motion, Form I-290B) on April 12, 2024, and again on April 23, 2024, but that U.S. Citizenship and Immigration Services (USCIS) rejected the filings because the check submitted as payment of the filing fee was returned by the bank. The Petitioner again attempted to file the motions in May 2024. The record indicates that USCIS received the filing, along with the correct fee payment, on Monday, May 20, 2024.

Under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. The regulation at 8 C.F.R. § 103.2(a)(7)(i) explains that the filing date is “the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format.” In addition, 8 C.F.R. § 103.5(a)(1)(iii)(B) specifies that a motion filing must

include a fee payment of the correct amount. As relating to a motion to reopen the proceeding, the filing deadline may be excused if a petitioner demonstrates that the delay was reasonable and was beyond their control. 8 C.F.R. § 103.5(a)(1).

We will dismiss the Petitioner's combined motions because they are untimely filed. Our latest motion decision was issued on March 18, 2024. The Petitioner properly filed his motions on May 20, 2024,<sup>1</sup> 63 days after we issued the adverse decision. While the evidence indicates that the delay was due to the Petitioner's fee payment being dishonored by the bank on first two occasions when he attempted to file the current motions, he has not argued or shown through documentation that the delay in filing is reasonable and beyond his control. *See* 8 C.F.R. §§ 103.5(a)(1), 103.8(b). With respect to the motion to reconsider, neither the Act nor the pertinent regulations grant us authority to extend the 33-day time limit for filing a motion to reconsider. Accordingly, the combined motions will be dismissed as untimely filed.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

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<sup>1</sup> When computing the period of time for filing an appeal or motion, USCIS counts every calendar day (including Saturdays, Sundays, and legal holidays) starting the first calendar day after the date USCIS mailed the unfavorable decision. If the last day of the filing period falls on a Saturday, Sunday, or a legal holiday, the period to file an appeal or motion runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. *See* 8 C.F.R. § 1.2